

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:05-CR-00281-F-1  
No. 5:12-CV-00380-F

SAINT GRIFFIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	<u>ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

This matter is before the court on Saint Griffin's Motion to Set Aside Judgement [DE-41]. In his Motion to Set Aside Judgement, Griffin argues that this court should reconsider its June 28, 2012 Order [DE-30] dismissing his Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-29], in light of the Fourth Circuit's holding in *Whiteside v. United States*, No. 13-7152, 2014 WL 1364019 (4th Cir. April 8, 2014).

In *United States v. Winestock*, 340 F.3d 200 (4th Cir. 2003), the Fourth Circuit held:

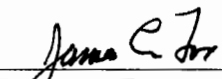
[A] motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application, while a motion seeking a remedy for some defect in the collateral review process will generally be deemed a proper motion to reconsider. Thus, a brand-new, free-standing allegation of constitutional error in the underlying criminal judgment will virtually always implicate the rules governing successive applications. Similarly, new legal arguments or proffers of additional evidence will usually signify that the prisoner is not seeking relief available under Rule 60(b) but is instead continuing his collateral attack on his conviction or sentence.

*Id.* at 207 (internal citation omitted). The court finds that the instant Motion to Set Aside Judgement is a "successive" motion. The court further finds that Griffin has not shown that he has obtained permission from the Fourth Circuit Court of Appeals to file the motion. *See* 28 U.S.C. § 2255(h) ("A second or successive motion must be certified as provided in section 2244

by a panel of the appropriate court of appeals[.]”). For this reason, Griffin’s Motion to Set Aside Judgement [DE-41] is DISMISSED. The court concludes that Griffin has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 14<sup>th</sup> day of May, 2014

  
\_\_\_\_\_  
James C. Fox  
Senior United States District Judge